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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/008,531 01/16/98 RHODES

H MI0012V2

MMC2/0307

 EXAMINER

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EATON, K

 ART UNIT PAPER NUMBER

2823

**DATE MAILED:**

03/07/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Advisory Action</b>	Application No.	Applicant(s)
	09/008,531	RHODES, HOWARD E.
	Examiner Kurt M. Eaton	Art Unit 2823

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 16 February 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check only a) or b)]

a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.

b)  In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37CFR 1.191(d)), to avoid dismissal of the appeal.

2.  The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.

3.  The proposed amendment(s) will not be entered because:

(a)  they raise new issues that would require further consideration and/or search. (see NOTE below);

(b)  they raise the issue of new matter. (see Note below);

(c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

4.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

5.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

6.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: see ATTACHMENT TO ADVISORY ACTION.

7.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

8.  For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 21-32,35,36 and 40-46.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

9.  The proposed drawing correction filed on \_\_\_\_\_ a) has b) has not been approved by the Examiner.

10.  Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.

11.  Other: \_\_\_\_\_.

**ATTACHMENT TO ADVISORY ACTION**

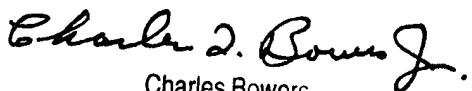
1. The request for reconsideration has been entered and considered but does not overcome the rejection because of the following.
2. Applicant reiterates the arguments concerning the rejection of claims 21-32, 35, 36, and 40-46 from their amendment and response mailed 11/27/00. Accordingly, the examiner respectfully reiterates the responses to the arguments concerning the aforementioned rejections found in the Office Action mailed on 1/30/01.
3. In the instant response, Applicant presents new arguments with respect to claim 31. More specifically, applicant contends that the structure corresponding to reference numeral 13 of Matsuo is an electrode and is not a contact and, because of this apparent distinction, Matsuo fails to anticipate the invention of claim 31. Applicants arguments are not commensurate with the scope of the instantly claimed invention. The examiner respectfully submits that, in terms of structure and function, the structure corresponding to reference numeral 13 of Matsuo and the claimed invention are substantially the same (i.e., there is no claimed structural difference or material difference to differentiate between the contact of applicants claimed invention and the structure corresponding to reference numeral 13 of Matsuo).
4. Applicant additionally contends the invention of claim 26 is allowable over the prior art of record since “the undesirable etching described in the Office Action is not the same as that which is claimed by Applicants”. At this point, Applicant is referring to undesirable etching which removes an amount of conductive material residing underneath an overlayer of insulative material when a contact hole is formed in the insulative material. Applicants arguments are not commensurate with the scope of the instantly claimed invention. The examiner respectfully submits that the claimed

invention presents nothing that Bergemont, the relevant prior art, does not teach or is well known and accepted within the art (see Office Actions mailed on 10/24/00 and 1/30/01).

***Conclusion***

5. Paper related to this application may be submitted directly to Art Unit 2823 by facsimile transmission. Papers should be faxed to Art Unit 2823 via the Art Unit 2823 Fax Center located in Crystal Plaza 4, room 4C23. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (15 November 1989). The Art Unit 2823 Fax Center number is **(703) 308-7722 or -7724**. The Art Unit 2823 Fax Center is to be used only for papers related to Art Unit 2823 applications.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to **Kurt Eaton** at **(703) 305-0383** and between the hours of 8:00 AM to 4:00 PM (Eastern Standard Time) Monday through Friday or by e-mail via [kurt.eaton@uspto.gov](mailto:kurt.eaton@uspto.gov).

  
Charles Bowers  
Supervisory Patent Examiner  
Technology Center 2800